

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NOS. F008686 & F100390**

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| <b>BATHEL ALLEN CUPPLES, EMPLOYEE</b>  | <b>CLAIMANT</b>   |
| <b>ROLLISON SEED COMPANY, EMPLOYER</b> | <b>RESPONDENT</b> |
| <b>AGRI GROUP-COMP, CARRIER</b>        | <b>RESPONDENT</b> |

**OPINION FILED DECEMBER 15, 2005**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on September 16, 2005 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of additional medical treatment and attorney's fees.

At issue is whether additional medical treatment is reasonable and necessary pursuant to Ark. Code Ann. §11-9-508 and whether the claimant's present condition is causally related to the compensable injury pursuant to Ark. Code Ann. §11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship during July 2001, June 1998 and November 11, 2000 at a compensation rate of \$394.00. Benefits have been paid pursuant to previous awards, see Judge Curdie's orders of September 6, 2001 and November 19, 2002; the Full Commission's opinions of July 29, 2003 and October 14, 2004, and Judge Hogan's decision of May 20, 2004.

The claimant wishes to pursue additional medical treatment with an orthopaedic surgeon as recommended by Dr. Tracy. The claimant also seeks payment of Dr. Tracy's bills and his out-of-pocket expenses for prescription medication.

The respondents contend all appropriate benefits have been paid and further medical treatment is unreasonable, unnecessary and unrelated to the compensable injury. The respondents paid for Dr. Tracy's initial visit before controverting the claim.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript; the deposition of Dr. Tracy; and the previous hearing transcripts with exhibits.

The claimant was the only witness to testify. He wears a back brace and uses a cane.

The claimant, age 46 (D.O.B. March 20, 1959) has a 7<sup>th</sup> grade education. The claimant injured his back in 1998 when he fell on concrete and again in 2000 when he slipped while trying to get on a forklift, twisting his back.

The claimant received conservative treatment from surgeons, Dr. Anthony Russell, Dr. Jim Moore, and Dr. P.B. Simpson, and general practitioner, Dr. Tracy. He remains symptomatic with low back pain and numbness and cramping, primarily in the right leg and foot. He has fallen on several occasions and has trouble sleeping due to pain.

The claimant had a discussion with Dr. Tracy about his need for treatment from a specialist. The claimant's wife works as a home health nurse and her patients recommended Dr. Chakales. The claimant asked Dr. Tracy to refer him to Dr. Chakales.

The claimant saw Dr. Tracy on two occasions – November 18, 2004 (which was paid by the carrier) and December 1, 2004 (which was controverted). Outstanding bills include a \$69.00 office visit and prescription expenses. The medication was prescribed on the second visit, after the claim was controverted. However, the case manager's report indicates Dr. Tracy was waiting for the orthopaedic evaluation before prescribing medication. It was only after the consult was denied, and the claimant returned to Dr. Tracy, that medication was prescribed for pain.

On cross-examination, Attorney Demory pointed out that the claimant's condition has not changed since July 2000. Drs. Moore, Simpson and Russell concluded that the claimant was not a surgical candidate. The claimant has had no medical treatment in the last year but he is able to

perform activities of daily living and act as superintendent of his church. The claimant was advised to exercise and lose weight. He is 5'11" and presently weighs 310 pounds. He was overweight prior to the injury and he has gained weight throughout the proceedings.

### MEDICAL EVIDENCE

The claimant's history of medical treatment is summarized in the previous opinions. The claimant has been diagnosed with degenerative disc disease and bulging discs, however, he is not considered a surgical candidate.

Since the last hearing, the only physician the claimant has seen is Dr. Tracy. In his deposition, Dr. Tracy explained that he is the claimant's family physician and has treated the claimant since 1991. The claimant was seen on January 8, 1996 for back pain after a fall on steps and was treated conservatively with medication.

In November, 2004, Dr. Tracy saw the claimant after a Change of Physician was granted by the Commission. Dr. Tracy performed a physical examination, noting positive straight leg raising and diminished reflexes. Based on these findings and the claimant's complaints of pain, he recommended consultation with a specialist and the claimant told him he would like to see Dr. Chakales.

The claimant returned to Dr. Tracy on December 1, 2004 complaining of pain and he prescribed medication. He commented that if the claimant was not allowed to see a specialist, he would continue to prescribe the claimant's medications and urge him to lose weight.

Dr. Tracy was also questioned about causation:

ATTORNEY DEMORY:

You don't have an opinion as far as his back condition if it's related to his work related incident or some other either pre-existing condition or conditions that occurred after the work related injury, is that right?

DR. TRACY:

Yeah. I have no knowledge.

However, no evidence was presented regarding a re-injury which would constitute an independent intervening cause breaking the chain of liability.

## FINDINGS AND CONCLUSIONS

The claimant has had the benefit of medical treatment (medication, TENS unit, injections), consultation with specialists, and diagnostic testing (MRI, EMG/NCV, x-rays, CT scans, myelograms). His symptoms have not changed since the injury.

Employers must promptly provide medical services which are “reasonably necessary in connection with” the compensable injuries. Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. Patchell v. Wal-Mart Stores, Inc., \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996). Reasonably necessary medical services “may include that necessary to accurately diagnose the nature and extent of the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury.” Greer v. Phillip Mitchell Construction, Full Commission opinion February 14, 2003 (E906565). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, it is necessary to analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers’ Compensation Commission, December 13, 1989 (Claim No. D511255).

After review, I find that yet another consultation with a specialist is unreasonable and unnecessary. The specialists were aware of his symptoms and released him to return to work.

A compensable injury is one arising out of and in the course of employment, Ark. Code Ann. §11-9-102(4)(A)(1). The claimant must prove, among other things, a causal relationship between the employment and the injury. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002).

The Court has held that if:

[a] claimant’s disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the

employee's condition, we may say without hesitation that there is no substantial evidence to sustain the [C]ommission's refusal to make an award. Clark v. Ottenheimer Bros., 229 Ark. 383, 314 S.W.2d 497. But if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the [C]ommission's conclusion is controlling. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172.

Hall v. Pittman Constr. Co., 235 Ark. 104, 105-106, 357 S.W.2d 263, 264 (1962).

Based on the claimant's testimony and his medical records, his symptoms have not changed since the initial injury. Therefore, the claimant has demonstrated a causal connection and I find the respondents remain liable for pain management. The claimant may return to Dr. Tracy for follow-up with prescription medication at the respondents' expense.

1. The Workers' Compensation Commission has jurisdiction of this claim in which an employer-employee-carrier relationship during July 2001, June 1998 and November 11, 2000 existed among the parties at a compensation rate of \$394.00. Benefits have been paid pursuant to previous awards, see Judge Curdie's orders of September 6, 2001 and November 19, 2002; the Full Commission's opinions of July 29, 2003 and October 14, 2004, and Judge Hogan's decision of May 20, 2004.
2. The claimant has failed to prove by a preponderance of the evidence that consultation with a specialist is reasonable and necessary pursuant to Ark. Code Ann. §11-9-508.
3. The claimant has proven by a preponderance of the credible evidence of record that he remains symptomatic from his compensable injury and respondents are directed to pay Dr. Tracy's expenses and the claimant's pharmacy bills for pain management.
4. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21, 1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of

the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

**AWARD**

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge